

Access to Court and Access to Justice: Piercing through the Conceptual Ambiguities and Matters Arising**Abubakar Shehu Ahmad Tijani¹, Afolabi Mutiat Abisola² and Aliyu Muhammed Olaitan³**¹Department of Private and Property Law, University of Ilorin, Nigeria²Legal Practitioner at Abubakar Shehu Ahmad Tijani & Co, Ajufunbaya Chambers, Ilorin, Nigeria³Nigerian Law School, Lagos, Nigeria¹asat2001ng@gmail.com, ²afolabimutiat01@gmail.com, ³aliyumammedolaitan@gmail.com**Abstract**

There is conceptual problem on 'access to court' and 'access to justice. Thus, there is need to clarify the conceptual ambiguity arising from the wrong impression that many have on the concept of access to court and access to justice. This paper therefore examined the concept of right of access to court and right of access to justice taking into consideration various opinions of writers who have written on the subject matter. To achieve the above stated objectives, the research methodology employed in this paper is qualitative. Hence, the paper adopted doctrinal approach which entails library – based analysis of the content of both the primary and secondary sources of information. The primary sources in this regard include the various international instruments such as the United Nations Human Rights Treaties in Africa Situation, 1996; Universal Declaration of Human Rights, 1948, Canadian Charter of Rights and Freedoms 1985, African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, as well as national legislations such as the Constitution of the Federal Republic of Nigeria, 1999 (as altered), the Constitution of Uganda and the Constitution of the United States of America, and case laws. The secondary sources on the other hand are textbooks, journal articles, law reports, newspapers and internet materials. The paper found that the Constitutions of many countries guarantee right of access to court and right to access to justice but in practice, some of the Constitutions protect the right of access to court more than the right of access to justice. The study also found that the judiciary in most commonwealth countries is not inclined to adopt liberal approach while interpreting the provisions of some statutes or enactments which purport to impose limitation on the fundamental right of access to justice, they prefer to throw away genuine cases based on avoidable mere technicalities. This paper concluded that for people to enjoy effective and efficient access to court and access to justice, the courts should adopt liberal approach in interpreting the constitutional provisions on right of access to court. This will enhance proper dispensation of substantial justice to all citizens on equal basis without any form of discrimination or bias.

Keywords: Access, Court, Justice, Human rights, Ambiguity.**Introduction**

The constitution guarantees right of access to court in many countries including Nigeria, ¹ United States of America² and Uganda³ as the last hope of common citizen. Court serves as the venue where aggrieved persons ventilate their grievances. Therefore, to properly dispense justice to all manner of persons in accordance with the law, easy accessibility of court must be guaranteed.⁴ According to Justice Hugo Black of the United States Supreme Court in the case of *Barenblatt v. United States*,⁵ court is like a refugee camp for the helpless ones who are victims of prejudice and public excitement. The constitutional provisions that guarantee access to court will be obsolete and meaningless if the citizens encounter unnecessary obstacles or difficulties before having access to court. It has also been held in the case of *Yusuf v. Obasanjo*⁶ that fair hearing includes but not limited to free access to court and access to justice at any given time without unlawful hindrance or interference. Consequently, a person can be said to have been denied his right of access to justice if the person is not accorded his right of access to court as held in the case of *Unongo v. Aku*.⁷

Right of access to court is not an ordinary right (like the rights enumerated under chapter II of the 1999 Constitution of the Federal Republic of Nigeria). It forms part of the fundamental rights adumbrated under chapter IV of the said Constitution⁸ and the Constitution of the United States of America

¹ See section 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as altered).² See article III of the Constitution of United States of America.³ See article 28 (1) of the Constitution of Uganda, 1995⁴ Ese, M; 'The Nigerian Constitutional Law' (Princeton Publishing Company, Lagos, 2015) 114⁵ (1957) 274 US 357 at 367⁶ (2003) 16 NWLR (pt. 847) 554 at 603 – 605⁷ (1983) 2 SCNLR 332.⁸ See section 46 (1), 1999 Constitution (as altered)

(hereinafter referred to as USA).⁹ This paper is therefore intended to examine and to clarify the discrepancies associated with the concept of access to court and access to justice. The paper also analyzed the differences between the two terms and the importance of the distinction between them by making reference to some selected commonwealth countries such as Nigeria, Uganda, Tanzania, South Africa and United States of America.

Meaning of Access to Justice

Access to justice is the ability of both the low- and middle-class people to get the necessary legal aid and information they need at any particular time.¹⁰

The term “access to justice” is a generic word.¹¹ It engages a wider meaning which includes but not limited to right of access to court, right to legal representation by individuals who could not afford legal service because of high cost, avoidance of unnecessary delay and technicality in the legal system, right to fair hearing, right to be heard by impartial judge and right to know the outcome of trial or proceedings and the like.¹²

Access to justice also emphasizes the need to minimize or put an end to inadequacies and limitations associated with legal system by calling for reform of justice system, simplifying procedural and formal requirements and implementing mechanisms for group and third-party claims.¹³

With the advent of Canadian Charter of Rights and Freedoms in 1985, the idea of broader conception of access to justice came up.¹⁴ The approach looks beyond equality of opportunity for underprivileged or underrepresented litigants.¹⁵ It focuses on how to achieve equality of outcomes by addressing the problems militating against people who are struggling to have access to judicial system.¹⁶

It can be deduced from the above definitions that access to justice encompasses or absolves other approaches such as alternative dispute resolution like arbitration, mediation, conciliation and other measures in an effort to solve legal problems before getting to litigation stage in court of law. Furthermore, access to justice has been described as a basic principle of law.¹⁷ In the absence of access to justice, people will not be able to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable for their actions.¹⁸

The substance of right of access to justice basically involves the availability of accessible, affordable, timely, effective and efficient means of redress or remedies. The remedies may be derived through formal court system or through other avenue lawfully and legally permitted in the society by the enabling law.

Access to justice is more than mere improving an individual’s access to courts with legal representation. It involves the ability of people to seek and obtain a remedy through formal institutions of justice for

⁹ See article III of the Constitution of the United States of America

¹⁰ Michael, D. ‘Justice for All’ Canadian Bar Association National: Legal Insights & Practice Trends available at <https://www.nationalmagazine.ca> accessed on 27 January 2020

¹¹ Ibid

¹² Bogart, W.A., et al, ‘Access to Justice for a New Century: The Way Forward’ (Law Society of Upper Canada, Toronto, 2005) available at <https://www.aclc.com/what-is-access-to-justice> accessed on 27 January 2020

¹³ Roderic, A.M., ‘Access to Justice in Canada Today’ (Law Society of Upper Canada, Toronto, 2005) 19

¹⁴ Macdonald, R.A., ‘Access to Justice in Canada Today’ (Law Society of Upper Canada, Toronto, 2005) available at <https://www.aclc.com/what-is-access-to-justice> accessed on 27 January 2020

¹⁵ Ibid

¹⁶ Currie, A.B., ‘The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians’ (Ottawa Department of Justice, Canada, 2007)

¹⁷ Ibid

¹⁸ Ibid

their grievances in compliance with human rights standards. Right of access to justice is a right recognised globally through various instruments, laws or enactments.¹⁹

Meaning of Access to Court

Access to court simply refers to individual's formal right to litigate or defend a suit.²⁰ It also means the right to have your day in court.²¹ Being a global phenomenon, the right of access to Court may be perceived from various perspectives. According to his Lordship, Per Justice Thurgood Marshall of the Supreme Court of the United States of America, the right of access to court means:

"The fundamental constitutional right of access to the courts in one sense, and non-controversial part of our constitutional Law; barring usual circumstances any one can bring a lawsuit, or be heard in his or her own defense".²²

It is discernible from the above definition that the right of the citizens to have uninhibited access to court is constitutional in nature. It can also be said that, even before the existence of the constitution of any nation, right of access to court formed part of the tradition of the people especially in Africa traditional society.²³ In addition, any attempt by anyone to put barrier on the right of a citizen to maintain a lawsuit or be heard in a court of law will amount to infringement of the citizen's constitutional right of access to court. By its nature, the government or any constituted authority or individual person cannot interfere with the right of a citizen to approach courts of law to seek relief being a constitutional right. Justice Marshal has described the right as the "very essence of civil liberty".²⁴

Access to court was viewed in another perspective as:

"The ability of citizens to turn to impartial arbiters to resolve disputes over access to information and participation in decisions that affect the environment. Such impartial arbiters include mediators, administrative courts and formal courts of law among others".²⁵

From whatever perspective that the term "access to court" is viewed, it is submitted that, considering various definitions discussed above, every citizen is entitled, as of right, to have his/her complaint entertained at all times by the courts of law. People are entitled to legal protection by court of law at cheaper rate. It will amount to denial of right of access to court if the cost of litigation is on the high side. The European Convention on Human Rights and Fundamental Freedoms²⁶ and the case law of the European Court of Human Rights (ECHT) have given important guidance on the right of access to court particularly, on prohibitive cost of applying to court.²⁷ In the case of *Airey. Ireland*,²⁸ Ms Airey had argued that the prohibitive cost of applying to the High Court for a judicial separation had infringed her right of access to the courts. On examination of Article 6(1) of the Convention, the European Court of Human Rights dismissed the State's central argument that Ms Airey enjoyed access to the High Court just because she had a constitutional right to appear in person in the High Court to plead her own case. The court further held that the convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective.

¹⁹ See United Nations Development Programme, Programming for Justice: Access for All: A Practitioners Guide to a Human Rights-Based Approach to Access to Justice, Bangkok, UNDP, 2005 available at www.europeandcis.undp.org accessed on 4 December 2019

²⁰ Available at www.aclc.com/what-is-access-to-justice accessed on 4 December 2019

²¹ Ibid

²² See *Bounds v. Smith (1977) 430 U.S. 817*. Also available at <http://www.encyclopedia.com> accessed on 4 December 2019

²³ Akintunde, E., 'The Principle of African Customary Law' (Emiola Publishers Limited, Ogbomosho, 2005) 51

See also Mbiti, J.S., 'African Religions and Philosophy' (Heinemann, London, 1969) 211 where it was opined that the traditional chiefs and rulers have the duty of keeping law and order and executing justice in their areas.

²⁴ See *Marbuty v. Madison (1803) 5 U.S. (1 Cranch) 137*. See also Carol, R.A., "A Right of Access to Court under the Petition Clause of the First Amendment: Defining the Right" *Ohio State Law Journal*, 1999, vol. 6, No.2 available at <http://hdl.handle.net/1811/64998> accessed on 5 December 2019

²⁵ John, E.B; 'Best Practices – Access to Justice: Agenda for Public Interest Law Reform' available at https://www.best-practices_access_to_justice_7_0.doc accessed on 25 December 2019

²⁶ Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome, on 4 November, 1950, CETS No. 005, entry into force on 3 September, 1953, ratified by Ireland on 25 February, 1953

²⁷ See Article 6 (1) of the Convention

²⁸ 6289/73 (1979)2 EHRR 305 (9 October, 1979, (1981) ECHRI (6, February, 1981)

Similarly, Lord Macaulay who headed the Law Commission of India about more than a Century ago, declared that the preamble to the Bengal Regulation of 1795 was absurd when it stated that “high court fee” was intended to drive away vexatious litigants.²⁹ He further stated that such increase in the filing fee will also drive away honest plaintiffs who are unable to pay court fee. Therefore, argument that court fee be increased to prevent vexatious litigation should not be accepted as it does not only deprive the citizens their right of access to court, it also amounts to denial of right of access to justice.

In the case of *P.M. Ashwathanarayana Settee v. State of Karnataka*,³⁰ Venkatachaliah, J (of the Supreme Court of Indian as he then was) observed that:

*“The court fee as a limitation to access to justice is inextricably intertwined with a highly emotional and even evocative subject simulative of visions of a social order in which justice will be brought within the reach of all citizens of all ranks in the society, both those blessed with affluence and those depressed with poverty”.*³¹

The effect of the above dictum is that all civilized governments in the world need to recognize the significant role that high filing fee plays in the life of the people who intend to access justice through court of law. Every state or country also need to realize the need to make courts accessible to every citizen by making the cost of accessing the courts so simple and affordable, otherwise, only the reach citizens would have the financial ability to approach court for redress.

The Nigerian Constitution like other commonwealth countries makes establishment of courts mandatory³² likewise the Constitution of the United States of America.³³ The purpose of establishing courts is to make the process of adjudication fair and accessible to people on equal basis and at all material times. Thus, the court has jurisdiction to entertain and determine disputes between individuals on one hand and between individuals and the constituted authorities on the other hand. Therefore where any person feels that his right is or has or likely to be threatened, he can approach the court of law for redress without fear or favour.³⁴ Per Galinje, J.S.C., once held that courts are established for the purpose of settling disputes between parties appearing before them once and for all.³⁵ He added that once a case has been rightly and properly adjudicated, the dispute should not be revisited by way of technicality or under any disguise.

Therefore, it can be said that access to court is not analogous to access to justice and as such, the two cannot be used synonymously. The concept of access to justice is wider than the concept of access to court as justice is needed in every human affair. Be that as it may, denial of access to court may lead to denial of access to justice. The fact that a person lawfully accesses court does not mean that he will obtain justice because his right of access to court may be impaired by unnecessary technicalities that are prevailing in the formal court of law which may eventually lead to denial of access to justice. Access to justice is denied where people fear the system for dispute resolution, see it as anomaly and decide to ignore it.³⁶ Thus, legal impediments such as *locus standi*, statute of limitations, pre-action notice, error in signing of court processes and similar obstacles should be liberalized to enhance physical access to justice. Everybody should be given equal right and opportunity because where there is favoritism in the application and enforcement of law, justice is denied.

One important agency that can be deployed to facilitate quick access to court and effective access to justice is the Legal Aid Scheme which has been established in Nigeria to assist the indigent citizens to access court when necessary and to secure the services of Legal Practitioners to enforce their legal

²⁹ Jgannadha, M.R., ‘Access to Justice’ available at <https://www.dellihighcourt.nic.in> accessed on 23 December 2019

³⁰ (1989) Supp (1) SCC696

³¹ Ibid

³² See Chapter VIII, part 1, sections 230-296, Constitution of the Federal Republic of Nigeria, 1999 (as altered).

³³ See Article III of the Constitution of United States of America.

³⁴ See chapter IV of the Constitution of the Federal Republic of Nigeria and Article III, sections 1 and 2 of the Constitution of the United States of America and section 28 (1) of the Constitution of Uganda, 1995.

³⁵ See the case of *Oba J.A. Awolola, the Ededa of Eda – Oniyokiti v. The Governor of Ekiti State* (2018) LER S.C. 194/2008

³⁶ Sambo, A.O., ‘Limitation of Judicial Powers of Courts’ Budgets and Its Effects on Courts Financial Independence and Access to Justice’, *Pensee Journal*, (2014) vol.76, No.2, p.6

rights.³⁷ However, a careful perusal of the provisions of the Legal Aid Act, L.F.N; 2011 indicates that the Act limits the grant of Legal aid services to certain subject matters or proceedings enumerated in the Act which excludes some subject matters or causes of action.³⁸ This is not good enough to enhance quick access to justice. The congress of the United States of America also created Legal Services Corporation in 1974 in order to respond to the necessity to provide equal access to the system of justice.³⁹ The sponsors of Legal Services Corporation observed that provision of legal aid or legal assistance to those who face economic problems will reduce barriers militating against adequate opportunity to access justice through judicial process by the low-income persons.⁴⁰

In order to pave way for easy access to court and access to justice, the European Convention on Human Rights also guarantees to person charged with criminal offence, the right to have legal representation including the right to access to free legal assistance if he has no sufficient means and the interest of justice so requires.⁴¹ A person cannot benefit from this provision of the convention unless it is established that: the person does not have “enough means” (financial criterion) and free legal assistance is required” in the interest of justice” (substantive criterion).⁴²

Notwithstanding the provisions of the laws mentioned above, viz-a-viz the Nigerian Constitution, the Constitution of the United States of America and the European Convention on Human Rights, some problems are impeding the actual access to justice by the prospective beneficiaries. For instance, in Nigeria, one of the major reasons why Legal Aid Act was promulgated is to ensure that every citizen, whether rich or poor, have equal access to justice through legal representation or legal aid services. But the Act limits the subject matters or proceedings upon which legal aids or services can be granted to the citizens without stating any reason, and this amounts to a clog in the wheel of administration and dispensation of justice. It also betrays the purpose for which the Act was promulgated. This submission is in accord with the view of the International Commission of Jurists at its conference on the Rule of Law in a Free Society held in Delhi in 1959 where it was observed that:

*“Equal access to law for the rich and poor alike is essential to the maintenance of the rule of law. It is therefore essential to provide adequate legal service and representation to all those threatened as to their life, liberty, property or reputation who are able to pay for it”.*⁴³

Access to Court and Access to Justice: The Interface

In this paper, the literal and technical concepts of access to court and access to justice have been examined. The paper shows that the concepts of access to court and access to justice have different connotations. While access to court simply means the formal right to litigate or defend a suit in the court of law without unlawful hindrance or interference, right of access to justice is wider in meaning and scope than right of access to court. Access to justice involves putting in place machineries that can eliminate or minimize inadequacies associated with legal system prevailing in the formal court of law. Most constitutions of various countries including Nigeria, Uganda and United States of America recognise the right of access to court and right of access to justice has different legal concepts but there is strong legal relationship between the two concepts. Access to court is one of the legal ways by which justice can be obtained. Effective implementation of right of access to court will enhance efficient

³⁷ See the preamble to Legal Aid Act, Cap. 205, Laws of the Federation of Nigeria, 1990 which is now Legal Aid Act, No. 17, Cap. A21, Laws of the Federation of Nigeria, 2011. See also, Nlerum, S.O; ‘Access to Justice and Human Rights Protection in Nigeria: Problems and Prospects’ available at <http://dx.doi.org/10.1590/S1806-64452005000200007> accessed on 19 February 2019. General Olusegun Obasanjo was the first person to promulgate Legal Aid Decree in Nigeria on 26th November, 1976. See the Nation, vol. 11, No. 3773 of 22/11/2016, p.27.

³⁸ See the 2nd Schedule to the Act.

³⁹ See The Legal Services Corporation Act of 1974. See also Rebecca, B.P., ‘Making Justice Equal’ available at <https://www.americamprogress.org/issues/criminal-justice/.../12/making-justice-equal> accessed on 20 December 2019

⁴⁰ *Ibid*

⁴¹ See Article 6 (3) (c) of the Convention. See also Article VII (i) (c) of the African Charter of Human and People’s Rights (Ratification and Enforcement) Act, Cap. A9, Laws of the Federation of Nigeria, 2004 which provides that every individual shall have the right to have his cause heard. This comprises the right to defence, including the right to be defended by counsel of his choice.

⁴² *Ibid*

⁴³ Omidoyin, T.J. ‘Epileptic Legal Aid Scheme in Nigeria: A Breach of Right to Fair Hearing in Nigeria’, Journal of Law and Constitutional Practice, 2017, vol. 10, p.32.

access to justice. However, the Constitutions of some countries do not establish mechanisms that can prevent injustice that may arise as a result of mere technicality due to strict compliance with the constitutional provisions on right of access to court. It has been held in the case of *Oba J.A. Awolola, The Ededa of Eda-Oniyo of Ekiti v. Governor of Ekiti State & 2 Ors*⁴⁴ that courts are established to decide the rights and obligations of the litigants once and for all without resort to technicalities. For instance, in Nigeria, the Constitution provides that the proceedings of any court of law or tribunal including its decision shall be held in public except as otherwise provided by the Constitution itself.⁴⁵ Therefore, if the court is constrained to sit in the public and decides to sit in judge's chambers to take evidence of witnesses or delivers its judgment in the chambers, the entire proceedings of the court including the judgment so delivered shall be null and void for non-compliance with the provision of the constitution even if no miscarriage of justice is occasioned to any party before the court. In the case of *Nuhu v. Ogele*,⁴⁶ The subject matter of dispute in this case was title to land. The case was initiated at the Upper Area Court, Ilorin, Kwara State but there was appeal against the judgment of the court up to the Supreme Court which lasted for more than a decade. At the Supreme Court, the Appellant argued that the trial court delivered its judgment in the judge's chambers instead of open court contrary to the provision of section 33(3) of the 1979 Constitution and prayed the Supreme Court to declare the entire proceedings of the trial court including its judgment as null and void. The Supreme Court acceded to the Appellant's prayer; it allowed the appeal, declared the proceedings and judgment of the trial court null and void and of no effect whatsoever. The decision was based on mere technicality because the Supreme Court held that it does not matter whether any party suffered miscarriage of justice in the case or not. The court held that, what matter was that the provision of the Constitution had been contravened. Pat-Acholonu J.S.C. (as he then was) who delivered the lead judgment held that:

“the provision of the Constitution applies to even the Area Courts or Customary Courts, all inclusive. There is simply no escape route for any court from the operation of the constitution.”

The above scenario shows that the Constitution favors right of access to court than right of access to justice.⁴⁷ In the normal circumstance, once it is established that no miscarriage of justice is occasioned by any party to a suit, the court is required to adopt the principle of substantial justice without resorting to technical justice. Furthermore, the case revealed that, the fact that a person succeeds in accessing court does not mean that he will access justice as the two are not the same thing. The case which had been on for about ten years was ordered to be retried *denovo*, not minding the injustice that might have been suffered by the plaintiff in that case.

Under the Constitution of Uganda, there is similar provision requiring public hearing or trial. For avoidance of doubt, the Uganda Constitution provides that:

*“In the determination of his civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law”*⁴⁸. (Underlining supplied for emphasis)

Under the Constitution of the United States of America, the accused person is entitled to enjoy the right to a speedy and public trial, to have compulsory process for obtaining witnesses in his favour and to have assistance of counsel for his defence.⁴⁹ The assistance of counsel envisaged by the said Constitution is practical assistance not theoretical one. The counsel that will be assigned to an accused person in accordance with the constitutional provision should be a competent legal practitioner who has the required skills and knowledge to handle the accused person's case. In the case of *Gideon v. Wainwright*,⁵⁰ the Supreme Court of the United States held that in criminal case, any person that is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him. The court

⁴⁴ (2018) LER SC 194/2008

⁴⁵ See section 36(3) of the Constitution of the Federal Republic of Nigeria, 1999

⁴⁶ (2003) 12 SCNJ 158 at 179

⁴⁷ Ibid. See also the cases of *Edibo v. State* (2007) 5 SCNJ 325 at 335 & 343 (SC) and *Salawu v. Adza* (1997) 11 NWLR (pt. 527) 4 at 21 paras F-G and *Oviasu v. Oviasu* (1973) 11 S.C. 3 15.

⁴⁸ See section 28(1) of the Constitution of Uganda, 1995

⁴⁹ See Article VI of the Constitution of the United States of America.

⁵⁰ 372, U.S. 335. See also Article VI, U.S. Constitutional Amendment (6th amendment). See also *Argersinger v. Hamlin* 407 U.S. 25, 37 (1972)

emphasized that right to counsel applies in all criminal proceedings where the loss of liberty maybe involved. Notwithstanding this decision, many defendants who cannot afford counsel in the United States go unrepresented or do not receive adequate and appropriate legal representation leading to denial of right to access to justice. Defendants with publicly appointed attorneys or legal practitioners are more likely to be detained before the commencement of trial and are more likely to be jailed.⁵¹

In the case of *State of New Jersey v. Terrence Miller*,⁵² Terrence Miller met his Legal practitioner (appointed for him by the court for his defence) for the first time on the morning of his first hearing on drug charges. The legal practitioner, who had not handled a criminal case in seven years, was assigned to Miller's case about four days to the hearing of the case. He was only able to speak to Miller for a few minutes before the commencement of the trial, still, the presiding Judge denied Miller's lawyer's request for adjournment to prepare for his client's defence and Miller was convicted in just a few days. On appeal against the conviction, an appellate court in New Jersey affirmed the conviction on the ground that Miller failed to prove that the trial would have gone differently, had he met his legal practitioner earlier. The above cases further establish the fact that the Constitution of the United States of America also promotes right of access to court more than it promotes right of access to justice.

To further draw the line of distinction between the concept of access to court and access to justice, it is necessary to examine the case of *Mwenda v. Attorney General*.⁵³ In this case, Journalist Andrew Mwenda, in a radio live talk show made several critical comments against the Ugandan Government. He also expressed that the government was partly to blame for the death of Sudan's former first Vice President, John Garang, who was killed in a helicopter crash after his visit to Uganda. The state charged Mwenda with the crime of sedition under sections 39(1) (a) and 40(1) (a) of the Uganda Penal Code. The state alleged that the remarks made by Mwenda had the intention to bring into hatred and contempt or to excite disaffection against the president, the government and the Constitution. Mwenda and the Eastern African Media Institute (EAMI) challenged the constitutionality of the sections of the Penal Code on the ground that they were contrary to articles 29 (1) (a) of the Constitution and that both sections were not demonstrably justifiable in a free and democratic society as established in article 43 (2) (c) of the Constitution. In a unanimous decision of the Constitutional Court of Uganda, Chief Justice Letitia Mukasa Kikonyogo held that the sedition provisions are too vague and inhibited the enjoyment of the right to freedom of expression under article 29 of the Constitution. The Court further stated that the state had the burden to prove that sections 39 and 40 of the Penal Code were a justifiable limit to the right of freedom expression under a free and democratic society. The court concluded that the two sections were null and void to the extent of their inconsistency with the provision of article 29 of the Constitution. The above judgment emphatically upholds the rule of law and protection of the constitutional provisions. It also paved way for effective and proper implementation of right of access to justice.

The right of access to justice has, for a very long time in many jurisdictions, been considered as one of the major rights that every citizen is entitled to enjoy in a democratic and civilized society without let or hindrance. In contrast, the importance of right of access to court was elucidated by Scrutton, J in England in *Re Boaler*⁵⁴ where his Lordship stated that every subject of the king has unassailable right to appeal to the king if he alleges that a wrong punishable criminally has been done to him or has been committed by another subject of the king. He added that the right must be watched and protected jealously by the court. It is therefore necessary for the court to ensure that the legal link or relationship

⁵¹ See Bureau of Justice Assistance Contracting for Indigent Defense Services: A Special Report (U.S. Department of Justice, 2000) available at <http://www.ncjrs.gov/pdffiles1/bja/181160.pdf> accessed on 22 January 2020

⁵² Suit No. A6243-07T4, Superior Court of New Jersey, Appellate Division, June 13, 2011 available at <http://caselaw.findlaw.com/nj-superior-court-appellate-division/1570547.html> accessed on 21/01/2020. See also Andrew, C., 'How Much Does a Public Defender Need to Know About a Client, The Atlantic', October 23, 2013 available at <http://www.theatlantic.com/national/archive/2013/10/how-much-does-a-public-defender-need-to-know-about-a-client/280761/> accessed on 27 January 2020

⁵³ (2010) UGCC 5 (Constitutional Petition no. 12 of 2005). Also available at <https://namati.org> accessed on 13 May 2020

⁵⁴ (1915) 1 KB 21 at 26. See also *Chester v. Bateson* (1920) 1 KB 829; *R & Paul Limited v. The Wheat Commission* (1937) AC 139; *Pyx Granite co Ltd v. Ministry of Housing and Local Government and others* (1960) AC 260 and *Raymond v. Honey* (1983) AC 1

that exists between the two legal concepts is properly guarded so that one is not compromised in lieu of the other. It is the access to justice that gives life to access to court. Without access to justice, access to court would become meaningless as injustice, oppression and arbitrariness would become the order of the day.

This position can be corroborated by the dictum of Mokgoro, J of the Constitutional Court of South Africa who held that:

“The right of access to court is indeed foundational to the stability of an orderly society. It ensures the peaceful, regulated and institutionalized mechanisms to resolve disputes without resorting to self-help. The right of access to court is a bulwark against vigilantism, and the chaos and anarchy which it causes”⁵⁵

The same position was held by Justice Samata of the Tanzanian Court of Appeal when he stated that a person’s right to unimpeded access to court cannot be limited by mere express enactment except by the legislation which is not only clear but which is also not in violation of the constitutional provisions.⁵⁶ To this end, strict adherence to the constitutional provisions or to other enactments should not be allowed to frustrate the exercise of right of access to court and access to justice. The court should be ready to take bold decisions while interpreting any provision of any law that appears to prejudice the achievement of the legitimate objectives of right of access to court and access to justice.

Conclusions

The paper has examined the concept of access to court and access to justice literarily and technically. Attempt was made in the paper to draw line of distinction between the two terms. The work also indicated that the constitutions of some countries attach much importance to right of access to court than right of access to justice. It is therefore suggested that relevant and necessary machineries should be put in place to ensure that right access to justice is not prejudiced through strict adherence to the provisions of the constitution where such adherence is premised on mere technicality. The courts are advised to pursue the course of substantial justice since courts are not meant to punish parties for inevitable error that may be committed by them or by their counsel. There is need to minimize or put an end to inadequacies and limitations associated with legal system by calling for reform of justice system, simplifying procedural and formal requirements and implementing mechanisms that will put an end to technical justice.

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⁵⁵ See Chief Direko Lesapo v. North West Agricultural Bank and Another (2000) SA 409 (CC)

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